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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,200	09/10/2003	Michael Haul	P24085	3243
7055	7590	09/20/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			DRODGE, JOSEPH W	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,200

Applicant(s)

HAUL, MICHAEL

Examiner

Joseph W. Drodge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-25 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) 37-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 37-40 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Newly submitted claims 37-40 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The new limitations of a detection device being between a feeding mechanism and a drum and feeding elements to a magazine would necessitate a different, new search in the conveyor class, class 198 and present subject matter distinct from that of claims 1-25.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 37-40 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,6-10,14-17 and 21-24 remain rejected under 35 U.S.C. 102(b) as being anticipated by Molins et al patent 3,062,588. Molins et al disclose a mechanism 52 that feed filter elements (cigarette filters) in a lengthwise axial manner relative to and toward the flutes or seats of rotatable drums 14 (and see column 6, lines 11-13), a feeding device or element 16 that feeds the filter elements, in a crosswise axial manner relative to and towards a workstation assembly device 10 [as in claims 7 and 8], that

constitutes a magazine or hopper for storage since the cigarette filter elements are stored there for intermittent periods before they are united into assembled cigarettes (column 2, lines 60-63 and column 4, lines 9-12 and 61-71), and comprising rotatable drums 14 with plural seats, as apparent in figure 3 [as in claim 10] and also optical detection devices (column 3, lines 36-44) [as in claim 9] that controls drum rotation in response to filter element detection (see at least column 5, lines 43-58).

Molins et al also disclose additional features and elements of various, other, dependent claims. For claims 2 and 3, the filter elements may be rods ("stubs") or rod-shaped (column 1, lines 11-24). For claims 4 and 9, the elements are fed by conveying mechanism (column 2, lines 2-5 etc.) to the drum in a lengthwise axial manner (figure 3 and column 4, lines 55-61). For claims 14-16, see movable retaining mechanisms 52 and 53 for trapping filter elements in the drum seats. For claim 17, the drum rotates independent of relative position of any particular element (column 5, lines 55-61). For claims 21 and 22, the drum is also a part of a larger conveying system or station also comprising conveying mechanisms and magazines/hoppers (column 1, lines 53-69). For claims 23 and 24, there may be multiple numbers of drums and other device components (especially column 6, lines 41-48).

If necessary, it is noted that none of the instant claims positively recites the "magazine", conveying from or to magazines is taught by Heitmann patent 4,618,293 (applied later in this Action) in the event claims are amended to include such limitation.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Molins et al patent 3,062,588 in view of Bostelmann et al patent 5,641,250 or Hinchliffe et al patent 4,245,934. Claim 20 differs in requiring a mechanism to eject defective filter elements; such is taught by Bostelmann at column 6, lines 63-68. It would have also been obvious to have incorporated such defective element handling mechanism into the Molins et al system for quality control purposes.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molins et al patent 3,062,588 in view of Heitmann patent 4,618,293. Claims 11-13 differ in requiring a braking element, effective to brake the drum. Heitmann '293 teaches such braking element (column 5, line 60-column 6, line 18). It would have been obvious to one of ordinary skill in the art to have incorporated the braking element of Heitmann '293 into the Molins system, to ensure cooperation of operation of conveying

system including drums with the upstream or downstream magazine(s), (also see Heitmann at column 5, lines 1-6).

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molins et al patent 3,062,588 in view of Molins et al patent 3,365,239. Claims 18 and 19 differ in requiring an aligning element or mechanism. Molins '293 teaches such element (column 4, lines 44-46). It would have been obvious to one of ordinary skill in the art to have incorporated the aligning element of Molins '293 into the Molins '588 system, to facilitate accurate assembly of the filter rods into finished cigarettes.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Molins et al patent 3,062,588 in view of Heitmann et al patent 3,827,757. Claim 25 differs in requiring that the plurality of devices are arranged one below the other relative to a horizontal axis. Heitmann '757 teaches such arrangement. It would have been obvious to one of ordinary skill in the art to have incorporated the plural device arrangement of Heitmann '757 into the Molins system for purposes of efficient utilization of limited space for assembling the cigarette filters.

Applicant's arguments filed August 10, 2006 have been fully considered but they are not persuasive. It is argued that Molins feeds filter elements to drum 14 in a radial manner. However, it is submitted that figure 3 of Molins with column 6, lines 11-13 explicitly disclose feeding of filter elements lengthwise relative to flutes of drum 14, hence relative to axis of drum 14.

It is also argued that Molins does not disclose feeding of filter elements to a filter element magazine in a cross-wise axial manner. It is submitted that the term

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"magazine" reads on any downstream structure from the drum which is capable of some storage capacity for groups of filter elements and that element 10 of Molins meets such requirement, with element 16 clearly shown in figure 1 as feeding elements in a cross-wise axial manner relative to element 10.

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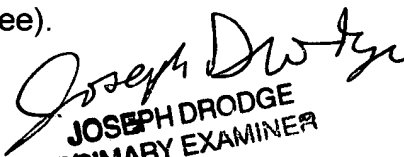
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at 571-272-1151. The fax phone number for the examining group where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

September 15, 2006


JOSEPH DRODGE
PRIMARY EXAMINER
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PRIMARY EXAMINER